

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EDWARD MIFSUD, et al.

Plaintiffs,

v.

TYCO VALVES AND CONTROLS, LP, et
al.

Defendants.

NO. C06-585JLR

ORDER

I. INTRODUCTION

This matter comes before the court on a motion to dismiss (Dkt. # 32) from Defendant Tyco International Ltd. (“Tyco International”) for lack of personal jurisdiction. The court has considered the parties’ briefing and accompanying declarations and exhibits. For the reasons stated below, the court DENIES Tyco International’s motion without prejudice and GRANTS Plaintiffs’ request to conduct discovery on the limited question of this court’s jurisdiction over Tyco International.

II. BACKGROUND

Plaintiffs Edward Mifsud and David DiDomizio worked for Defendant Tyco Valves & Controls, LP (“TV&C”) for over five years before the company terminated them, allegedly

1 for voicing concerns over perceived unlawful accounting practices. Plaintiffs brought suit in
2 state court against TV&C and its parent company, Tyco International (U.S.), Inc. (“Tyco
3 U.S.”), alleging wrongful termination and breach of contract. TV&C and Tyco U.S. removed
4 to this court on the basis of diversity jurisdiction. Plaintiffs subsequently amended their
5 complaint to name TV&C’s indirect parent, Tyco International, First Am. Compl. ¶ 1.6-1.7,
6 and to include a cause of action under the whistleblower protection provisions of the
7 Sarbanes-Oxley Act, 18 U.S.C. § 1514A, Second Am. Compl. ¶ 3.3.

8 Tyco International, a Bermuda corporation, now moves to dismiss Plaintiffs’ claims
9 against them pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction. Plaintiffs
10 assert several theories to support their contention that this court has jurisdiction over Tyco
11 International. In the alternative, Plaintiffs request additional discovery on the question.

12 III. DISCUSSION

13 When a defendant moves to dismiss a complaint for lack of personal jurisdiction and
14 the court holds no evidentiary hearing,¹ the plaintiff must make a prima facie showing of
15 personal jurisdiction to survive the motion. Harris Rutsky & Co. Ins. Servs., Inc. v. Bell &
16 Clements Ltd., 328 F.3d 1122, 1128-29 (9th Cir. 2003). The plaintiff must provide evidence
17 that, if believed, would support the court’s exercise of jurisdiction over the defendant. Id. at
18 1129. The court need not accept the plaintiff’s bare allegations if the defendant controverts
19 them with evidence. See AT&T Co. v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588 (9th
20 Cir. 1996). If both parties provide evidence supporting different versions of a fact, however,
21 the court must resolve competing inferences in the plaintiff’s favor. Harris Rutsky, 328 F.3d

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24 ¹A preponderance of evidence standard applies where the court holds an evidentiary hearing to
25 address personal jurisdiction. Data Disc, Inc. v. Sys. Tech. Assocs., Inc., 557 F.2d 1280, 1284-85
26 (9th Cir. 1977). Neither Plaintiffs nor Tyco International requested an evidentiary hearing.

1 at 1129. On a motion to dismiss, a court has discretion to allow a plaintiff to conduct
2 jurisdictional discovery. Id. at 1135 (holding that district court abused its discretion in
3 denying a motion for jurisdictional discovery).

4 Here, the record is not sufficiently developed to permit the court to determine whether
5 it can exercise jurisdiction over Tyco International. Plaintiffs have alleged this court's
6 jurisdiction over Tyco International primarily by virtue of the forum contacts of its subsidiary,
7 TV&C. Plaintiffs have not, however, had the opportunity to conduct discovery that would
8 allow them to develop a record and make a prima facie showing of jurisdiction.² The court
9 therefore grants Plaintiffs' request to conduct discovery solely on the question of whether
10 Tyco International has sufficient contacts (either direct or imputed) with Washington.³
11 Plaintiffs shall have **ninety (90)** days from the date of this order to conduct discovery on this
12 question. After the expiration of this time period, Tyco International may submit a motion to
13 dismiss. Plaintiffs should be prepared to oppose the motion or to dismiss their claims against
14 Tyco International. The court expects counsel to cooperate in the discovery process.

15 IV. CONCLUSION

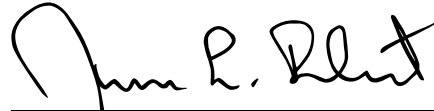
16 For the reasons stated above, the court DENIES Tyco International's motion
17 (Dkt. # 32) without prejudice and GRANTS Plaintiffs' request for discovery solely on the
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19 ²The court cautions Plaintiffs that attributing a subsidiary's contacts to a parent company is the
20 exception, not the rule. Harris Rutsky, 328 F.3d at 1134. Plaintiffs should not attempt to avoid
21 application of this exacting standard by citing to out-of-circuit precedent when the Ninth Circuit has
provided guidance on this question.

22 ³The court denies Plaintiffs' request to conduct discovery in order to determine whether
23 *nationwide* contacts subject Tyco International to this court's jurisdiction pursuant to Fed. R. Civ. P.
24 4(k)(2). If the court considers Tyco International's contacts with the United States based on the
activities of TV&C, more than one state would appear to have jurisdiction and Rule 4(k)(2) would not
25 apply. See Doe v. Unocal, 248 F.3d 915, 922-23 (9th Cir. 2001) (noting that Rule 4(k)(2) only
applies when a foreign defendant is not subject to the jurisdiction of any one particular state).
Plaintiffs have not given this court any indication that further discovery would suggest otherwise.

1 question of this court's personal jurisdiction over Tyco International. Tyco International may
2 submit a motion to dismiss on personal jurisdiction grounds after 90 days have passed from
3 the date of this order.

4 Dated this 13th day of December, 2006.

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8 JAMES L. ROBART
United States District Judge
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